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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 and Part 90 of)
the Commission's Rules to Facilitate)
Future Development of Paging Systems)
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

TO: The Commission

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**COMMENTS OF THE PAGING COALITION
ON MARKET AREA AUCTION PROPOSAL**

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SUMMARY

The law firm of Blooston, Mordkofsky, Jackson & Dickens, on behalf of its common carrier and exclusive private carrier paging clients listed in Attachment A hereto (hereinafter "the Paging Coalition" or "the Coalition") hereby submits its comments on the market area auction proposal contained in the Commission's February 9, 1996 Notice of Proposed Rulemaking (NPRM) in WT Docket No. 96-18 and PP Docket No. 93-253. The MTA-based market area licensing scheme will not be practical (especially for the UHF and VHF bands), and will disrupt essential existing paging services. It will also have a severe adverse impact on small to mid-sized paging providers. Therefore, the Commission should abandon this approach (including the proposal to reduce the service area and interference protection of 900 MHz stations). The Commission should also ensure that exclusivity for 929 MHz licensees is retained.

If the market area licensing procedure is adopted nonetheless, the Commission should reduce the market size to state-wide coverage for 929 MHz (since regional exclusivity was based on a state-by-state basis), and should use Basic Trading Areas (BTAs) for the UHF and VHF bands. The Commission should also (1) use multiple round auctions; (2) exempt existing licensees from any spectrum cap where they are bidding on their own channels; (3) allow incumbents to form bidding consortia; and (4) adopt small business protections (such as bidding credits and installment payments). Incumbent licensees should also be allowed to expand their existing systems within 40 miles of an authorized site, and fill in pockets within their coverage

that could not possibly be useful to the auction winner. Rural telephone companies and small businesses should be allowed to partition service areas from the market area winner.

The Commission should exempt IMTS, BETRS and control link operations in the VHF and UHF bands from any auction scheme. Existing control link operations should be grandfathered as co-primary, while future operations could be granted on a secondary basis.

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I. The Commission Should Not Adopt Its Market Area Licensing Proposal.

The Commission has asked for comment on all aspects of its market area licensing proposal, including the impact on incumbent licensees, the impact on potential new market entrants, the costs and benefits of the licensing scheme and whether it is practical. NPRM at para. 23. As discussed in its March 1, 1996 comments on the interim aspects of this rulemaking, the Coalition is made up of small and mid-sized carriers whose customers will be adversely affected by the market area licensing proposal, and the Coalition is therefore compelled to oppose this idea.

The costs of market area licensing and the adverse impact it will have on small businesses more than outweigh the benefits. Market area licensing may be appropriate when auctioning previously unlicensed spectrum, such as the Personal Communications Service (PCS) allocation. However, paging spectrum is now heavily licensed. As the Commission recognizes, carriers have already applied for the majority of sites needed for their systems. This is especially true in the common carrier paging bands, since many applications were filed in response to the Commission's Part 22 Rewrite Order that auctions may be implemented in the future for common carrier frequencies. Report and Order, CC Docket No. 92-115, 9 FCC Rcd 6513, 6517-18 at ¶19 (1994). While there are still a number of sites needed for "fill-in" purposes, especially where licensees are transitioning to the high speed "FLEX" protocol, much of the application processing has been accomplished.

Thus, the NPRM implicitly recognizes that most of the administrative benefits from reduced application processing would come too late. The Commission observes that the paging industry is mature. See Separate Statement of Commission Ness at p. 1. Current licensing activity is "confined largely to the addition of fill-in sites and minor expansion by existing licensees." NPRM at para. 13. Therefore, while it is critical that existing licensees be able to timely expand their systems in response to the marketplace, the administrative savings (in the form of fewer applications) from market area licensing will be minimal.

The market area scheme will not create opportunities for new systems either, since "there is relatively little desirable spectrum that remains available for licensing" in the lower common carrier paging (CCP) bands. Id. Likewise, the Commission has found that 931 MHz channels "are scarce in virtually all major markets and most mid-sized markets." Id. at para. 14. Similarly, exclusive 929 MHz channels "are nearly as occupied as the 931 MHz CCP channels, and soon there may be insufficient spectrum to allow coordination of new systems (as opposed to "fill-in" sites) in most major or mid-sized markets." Id. at para. 18.

More importantly, the market area plan ignores the fact that the hundreds of mature paging systems have grown strictly in response to customer demand, and thus are not confined within MTAs or other established geographic boundaries. Market area licensing would require small and medium-sized carriers to bid on any MTA into which their system extends. Otherwise, they risk not being able to expand, and even suffering a

degradation of service due to interference. Unfortunately, MTAs are likely to be too large for the Coalition members and most existing small and mid-sized carriers to successfully bid on. Often, these carrier do not desire to serve an entire MTA (especially in the West and Midwest, where a single MTA can cover multiple states). Moreover, these smaller carriers cannot afford to commit themselves to paying a steep auction bid and whatever buildout requirement the Commission ultimately adopts, especially at a time when the impact of competition from other wireless services (such as narrowband PCS, and nationwide paging services) is uncertain.

The Coalition is also concerned that market area licensing will create an opportunity for unscrupulous competitors and speculators to gain the equivalent of "slum lord" rights over existing carriers.¹ The market area winner will be in a position to block future expansions and modifications which are vital in order for incumbent licensees to respond to the marketplace, and to the need for new, high speed technologies. If at any time the incumbent loses a site, it will permanently lose its authority to operate that portion of its

¹ The Commission's proposed "substantial service" option for auction winners will allow this sort of conduct by competitors and speculators. The auction winner will be allowed to cover only that area not already served by incumbent licensees. NPRM at paras. 40-41. And by shrinking the area in which the incumbent licensee is entitled to protection, the Commission's new contour calculation method only further encourages such mischief, since a competitor or speculator will be able to construct co-channel facilities in the gaps created by the new method.

system, and the area will automatically revert to the auction winner.² See NPRM at para. 22.

A. The Commission Should Retain Its Existing Rules with Modifications that Will Speed Licensing and Reduce Administrative Burdens.

Because of the severe consequences for incumbent licensees, the Commission should abandon its market area licensing approach. Instead, the Commission should continue licensing on a transmitter-by-transmitter basis, with certain modifications: First, the Commission should allow incumbents to fill in their composite interference contour, in a manner similar to the interim proposal embodied in paragraph 140 of the NPRM;³ and second, incumbents should be allowed to serve "pockets" within their coverage in the manner proposed by the Coalition in its March 1, 1996 comments, even if the pocket is not wholly surrounded by the licensee's interference contour. This approach would allow an existing carrier to complete the build out of its system without filing applications for internal sites, but would not create the risk of lost service and stranded investment inherent in market area licensing. Any "white space" between two co-channel systems could be licensed under existing procedures, with mutually exclusive applications going to auction on a site-

² As discussed in the Coalition's March 1, 1996 comments, loss of service area is a particular concern for smaller carriers, given the overwhelming demand for antenna sites by PCS and other licensees. Smaller carriers may not be able to afford the steep site rental increases that tower owners will be able to command.

³ Unlike the paragraph 140 proposal, the composite interference contour for 900 MHz should be calculated using the existing fixed radius method, as discussed below.

by-site basis. Such auctions could be accomplished through a low-cost oral outcry or telephonic bidding format. See, e.g., March 1, 1996 Comments of Brandon Communications, Inc. at p. 9. This procedure would significantly reduce the number of applications which would be filed, and thereby speed the processing of all applications.

This approach would be consistent with the Commission's stated goals of simplifying system expansion and reducing the administrative burden on licensees and the Commission. NPRM at para. 21. It would also enhance regulatory symmetry, especially between 931 and 929 MHz carriers. Id. Mutually exclusive applications could still be filed. However, the number of such filings should be reduced, especially since competitors will not be able to "squeeze in" sites where the primary purpose is to block a licensee from expanding. In any event, the Interactive Video and Data Service (IVDS) auction demonstrated that oral outcry auctions can resolve a number of mutually exclusive cases quickly and inexpensively. Moreover, the Coalition suspects that use of site-by-site auctions will encourage the expeditious settlement of many frequency conflicts.⁴ Much of the "daisy chain" mutual exclusivity in the 900 MHz bands will be eliminated when the Commission

⁴ Of course, the Commission should continue to allow mutually exclusive applicants to reach settlements. The Commission's statutory auction authority (embodied in Section 309(j)(6)(E) of the Communications Act of 1934, as amended), specifically provides that the Commission should continue to encourage settlements: "Nothing in this subsection, or in the use of competitive bidding, shall be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings...."

lifts its stay on frequency specific licensing for 931 MHz applications, which was adopted in the Part 22 Rewrite Order. 9 FCC Rcd at 6533, para. 95. This same approach could be adopted for 929 MHz.

The Commission has indicated that its new rules should be designed "so that competitive success is dictated by the marketplace, rather than by regulation." NPRM at para. 2. It is respectfully submitted that the market area licensing proposal runs counter to this goal, by trying to squeeze the processing of paging applications into a mold designed for awarding grants on unlicensed spectrum. Indeed, the Commission stated as recently as the 1994 Part 22 Rewrite Order that "we have not determined that regional and wide area paging services always serve the public interest better than local paging services . . . our position remains that the marketplace should determine the proper mix of wide-area and local paging service." Id. 9 FCC Rcd at 6517, para. 19. By requiring applicants to bid on MTA licenses, and imposing a build-out requirement, the Commission is contradicting its own position by forcing carriers to provide wide-area service. Retaining the present licensing rules, with the modifications discussed above, is a more reasonable approach that will have a less harmful impact on small and medium-sized licensees. More importantly, it would have a less harmful impact on the public subscribers of these licensees.⁵

⁵ The Commission proposes to allow incumbent licensees to either (1) continue operating under existing authorizations or (2) trade in their site-specific licenses for a single system-wide license, demarcated by the aggregate of the service contours around each of the incumbent's contiguous sites operating on the same channel. NPRM at para. 37. However, the NPRM does not explain how protection to a system-wide composite license would differ from protection to the incumbent's existing licenses. The NPRM implies

B. If Market Area Licensing Is Used, Certain Market Areas Should Be Exempted from Auctions.

If the Commission chooses to implement market area licensing despite the adverse consequences described above, then it should adopt an exemption from market area auctions for incumbent licensees who can demonstrate that most (e.g., 66%, or two-thirds) of the market area population is within their interference contours. A market area does not offer a practical auction opportunity if a single carrier already has such ubiquitous coverage within its boundaries. Competing bidders are more likely to be competitors or speculators seeking to block expansion and/or extort an after-market settlement from the incumbent. Therefore, the public interest is better served by granting the market area license to the existing licensee without an auction. The only scenario where this exception may not be appropriate is if the competing bidder is a co-channel licensee serving the adjacent market area. Under this circumstance, the Commission can be better assured of a bona fide intent on the part of the bidders. The Commission can exclude such scenarios from the exemption.

C. Smaller Market Areas Are Necessary, If Market Area Licensing Is Used.

As discussed above, many small to mid-sized carriers will not be able to successfully bid on and construct MTA-sized regions. These carriers have not planned their systems on an MTA scale, and in many instances the system

that the system-wide license would be restricted to "contiguous" sites, which may force the incumbent to give up any sites that do not have overlapping contours with the main portion of the system. Thus, this approach is ambiguous and does not appear to fully safeguard the rights of incumbents.

may cross MTA boundaries, putting them in the impossible position of having to win multiple MTAs. Therefore, if the Commission adopts a market area licensing approach, it should utilize market areas which more closely follow the historic licensing of paging systems. For 929 MHz systems, the market areas should be defined by state boundaries, since this standard was used in defining regional exclusivity. State boundaries may also be appropriate for 931 MHz systems. In the VHF and UHF bands, BTA-sized market areas would appear to be the most appropriate, since these systems were mostly licensed in the 1960s and 1970s as local systems. Many were not able to grow on a regional basis because of the crowded co-channel environment.⁶ It is respectfully submitted that use of more reasonable market areas would lessen the onerous impact of market area licensing on smaller carriers.

D. Nationwide Licensees Should Not Have an Undue Competitive Advantage.

The Commission also requests comment on whether nationwide paging channels should be subject to market area licensing. NPRM at para. 26. Because nationwide 929 and 931 MHz systems also offer local and regional coverage, they directly compete with other licensees that will become subject to market area licensing. The Coalition advocates that all competitors be on a level playing field, so that the nationwide carriers do not gain an undue

⁶ Many independent telephone companies providing service on what were once wireline-only guardband channels (152.84 and 158.10 MHz) have never sought to extend beyond their certificated local exchange telephone service areas, since the paging service has been provided primarily as an accommodation to their telephone customers.

advantage in the marketplace. This goal can best be met by retaining the existing licensing scheme with the modification described above.

E. The Commission Should Restrict Eligibility for Auctions to Existing Licensees and Applicants.

The NPRM (at para. 65) requests comment on whether the Commission should restrict eligibility for market area auctions. Given the Commission's findings that paging channels are already heavily licensed, and that few opportunities exist for new market entrants, the Commission should restrict eligibility for auctions to existing carriers, or entities with applications pending as of February 8, 1996. If smaller market areas are adopted, there may be room for an exception in rural areas, where opportunities still exist. However, where spectrum is scarce, incumbent licensees and applicants, many of whom have had applications pending at the Commission for nearly two years, should not now have to bid against speculators in order to complete their systems.

F. The Commission Should Retain the Existing Service Area and Interference Contours.

The Commission proposes to adopt an "eight radial contour method" for calculating the protected service area and interference contours for 900 MHz stations. NPRM at para. 52. The current "fixed radius method" protects an assumed service area that is generally 20 miles, based on an assumed interference contour that is generally 50 miles (for a minimum mileage separation of 70 miles for most stations). However, the new formulae would result in co-channel licensees being able to establish facilities much closer than

the previous separation.⁷ Comment is requested on applying the new standards to govern protection that the market area licensee will have to provide to existing systems. NPRM at para. 53.

For the same reasons that the Coalition opposed the new standards as an interim licensing measure, it opposes adoption of these formulae as a permanent standard. If the formulae are adopted, 900 MHz licensees will find that the auction winner's co-channel facilities will degrade the existing system's signal and will result in gaps in the licensed coverage.

900 MHz systems have been planned under the existing co-channel protection standards, and the Coalition believes that these standards are the best measure of the interference protection needed in the 900 MHz band. Under the new method, a system which previously had continuous coverage among its sites, and in fact provided continuous service, may now find gaps in the protected area large enough that the market area licensee will be able

⁷ The formulae set forth in paragraph 52 for calculating the service area and interference contours significantly reduce the present minimum mileage separation. The formula for calculating interference contours uses a median field strength of 21 dBuV/m, while the formula for calculating service areas is based on a median field strength of 47 dBuV/m. Based on the curves attached to the NPRM (Appendices B and C), Table A of the Coalition's March 1, 1996 comments shows the new service area and interference contour calculations for a range of antenna heights. The Table shows that stations operating at an antenna height above average terrain (HAAT) of 100 feet, with an effective radiated power of 1000 watts, will have a protected service area of only a 4.9-mile radius, reduced from the current 20-mile radius. The corresponding interference contour is reduced from 50 miles to 20.9 miles. At a HAAT of 200 feet, the service area is reduced to radius of 7.5 miles and the interference contour is reduced to a 27.1-mile radius. The NPRM notes that, at 1000 feet HAAT and 1000 watts ERP, the service area approximates the current 20 mile figure. However, in the experience of the Coalition members, antenna heights above average terrain for paging facilities are generally between 100 and 300 feet.

to install co-channel transmitters, thereby resulting in a net loss of service to the public. The Commission has indicated that "we believe it is essential that the incumbent's rights to operate under its existing authorizations not be diminished," NPRM at para. 22, and that "under any geographic licensing scheme adopted in this proceeding, all incumbent systems will be entitled to continue operating under existing authorizations with full protection from interference." Id. However, the proposed contour recalculation directly contradicts these assurances.

The new method is based on the Okumura 900 MHz propagation curves, which is a two-way propagation study. NPRM at para. 52. Therefore, this method may be unnecessarily restrictive, because it is designed to accommodate communications back to the base station. Footnote 102 of the NPRM indicates that the Okumura curves are based on a mobile receive antenna height of 1.5 meters (i.e., approximately 5 feet) above ground level. While the Commission states that this assumption "seems appropriate for paging receivers," id., pagers are normally carried at belt or pocket level, not above shoulder level.

Moreover, as discussed in the attached Engineering Statement of Sean Austin, there is a need to conduct further field evaluation on the proposed standard for propagation of 900 MHz for one-way paging, in order to determine the most appropriate model for defining the service and interference contours. The Commission's fixed radius licensing method for the 900 MHz bands has made such studies unnecessary. Before the Commission switches to the proposed eight radial contour method, extensive field tests should be

performed to develop an appropriate model for the new rules. Id. The separations dictated by the Okumura curves do not appear to take into account the effect of the ionosphere and other conditions on 900 MHz signals, which may experience co-channel interference at far greater distances than the reduced separations which the Commission now proposes. Id.

In this regard, the proposed 47 dBuV/m service area definition is based on a reasonably strong field strength "at more than 90% of locations in a suburban environment." NPRM at para. 52. This reliability standard may not be appropriate for existing paging systems. Because 900 MHz systems have been able to operate with an assumed service area of 20 miles and co-channel separation of 70 miles in most cases, their customers have become accustomed to receiving paging messages throughout much of the 20 mile service area without interference. While they may not receive their pages at more than 90% of locations in the service area, 80% or better reliability is more than adequate for many of these customers. If the Commission now reduces this protection through the use of the new method, many paging customers will no longer receive signals over the same area, since the auction winner can install co-channel facilities much closer to existing systems.

Since the new method would be applied retroactively to stations already licensed and operating, these new standards fail the balancing test for retroactivity discussed in the Coalition's March 1, 1996 comments and March 11, 1996 reply comments, given the harm caused to existing carriers, and their strong reliance on the present standard. See Retail, Wholesale & Department Store Union, AFL-CIO v. NLRB, 466 F.2d 380, 390 (D.C. Cir.

1972) (When balancing harm against benefit of a retroactive rule change, courts consider inter alia the reliance of parties on the former rule, and the burden imposed on these parties by the new rule.); Bowen v. Georgetown University Hospital, 488 U.S. 208 (1988) (Retroactively is not favored in law.); Yakima Valley Cablevision v. FCC, 794 F.2d 737, 745 (D.C. Cir. 1986) ("Courts have long hesitated to permit retroactive rulemaking and noted its troubling nature.") Existing licensees have invested hundreds of millions of dollars on their systems, and it would be grossly unfair to change the interference protection rules retroactively, especially since the filing freeze prevents existing carriers from modifying their systems to adapt to the new standard.

Moreover, the reduction of 900 MHz service areas and interference protection would appear to suffer the same statutory infirmity as the filing freeze. The reduction of such protection will not benefit existing carriers or their customers. Instead, it will only result in a disruption of paging services. The only apparent reason for the revised service and interference contour calculations would be to create more "white space," thereby increasing potential auction revenues. This purpose contravenes Sections 309(j)(7)(A) and (B) of the Communications Act of 1934, as amended, which prohibit the Commission from making its spectrum allocations and designing regulations based "on the expectation of Federal revenues" from the use of auctions. "[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, . . ." Arent v. Shalala, 70 F.3d 610, 616 (D.C. Cir. 1995) [quoting Motor Vehicle Manufacturers Association v.

State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983)]. Since Congress has expressly prohibited the Commission from basing its spectrum allocations and licensing regulations on the potential for auction revenues, adoption of the new contour formula would be arbitrary and capricious.

G. IMTS and Control Links Should Not Be Subject to Auction.

The NPRM does not clearly address the issue of whether the auction would apply to UHF and VHF band control links and Improved Mobile Telephone Service (IMTS) operations. The Commission should confirm that IMTS operations and control links will be protected on a grandfathered basis. In rural parts of the country where cellular service has been slow to develop, IMTS systems still provide two-way mobile telephone service to the public. The Commission has also made the UHF and VHF channels allocated for IMTS available for control link use, and has recognized the urgent need for control frequencies to be used in connection with paging operations. See e.g., Second Report and Order, CC Docket No. 87-120, 4 FCC Rcd 6415, 6416-17 (August 18, 1989) ("Control frequencies are essential for modern paging systems. . . . The acute shortage of control channels has been clearly demonstrated."). There is nothing in the record indicating that this acute need for control frequencies has diminished. To the contrary, the explosive growth of the paging industry and significant licensing of paging operations since 1989 has only increased the need for control channels.

Therefore, the Commission should adopt standards which will protect existing operations from interference due to the market area licensee. The

Commission should also provide for (1) future modifications of IMTS systems, where cellular service is still not available, and (2) licensing of additional control links. Control links licensed before the NPRM should be protected on a co-primary basis, while links licensed after the adoption of the NPRM would be secondary to the market area licensee's operations.⁸ Appropriate safeguards can be adopted to ensure that the availability of these frequencies for control operations is not abused, such as (1) requiring these applicants to show that their control facility is configured to use a directional antenna and only as much power as is needed to accomplish the control link, and (2) precluding control operations licensed after the NPRM from converting to paging or other use of the frequencies.

III. The Commission Should Adopt Auction Methodology Which Protects the Interests of Incumbent Licensees.

A. Multiple Round Auctions Should Be Used.

As discussed above, the Coalition believes that any auctions should involve site-specific applications for "white space" rather than MTAs or other "overlay" licenses. Whichever license area is adopted, the auction procedures should safeguard the rights of incumbent licensees. First, multiple round auctions should be used, so that the auction result will reflect the value of the license rather than an "extortion" payment from the existing licensee. If a single round auction method is used, an unscrupulous competitor can apply for

⁸ Most control links operating on VHF and UHF channels have been accorded co-primary status pursuant to the "flexible allocation" scheme adopted in CC Docket No. 87-120 which allows licensees to switch uses of their IMTS channels from IMTS to paging or control link operations, and to switch back again as they see fit.

a particular MTA only to force the incumbent licensee to grossly overbid for its frequency. The incumbent would thereby be subjected to the "winner's curse," because if it failed to overbid the value of the license, it would risk that a competitor or speculator would win the license (with all of the resulting adverse consequences discussed above).

B. Incumbent Licensees Should Be Exempt from Any Spectrum Cap If Bidding on Their Own Frequencies.

The Commission requests comment on whether it should place a limit on the number of paging channels that can be held by a single entity within any given geographic area. NPRM at paras. 68-70. The Commission proposes an exception to this limit that would allow incumbent licensees to bid on any frequencies for which they are already licensed. The Coalition strongly supports this exception, since certain Coalition members are licensed for multiple paging frequencies, which are used to provide a variety of services to the public. Because incumbents have already developed these existing paging operations, and may need to implement expansion or modifications in the future, these licensees should not be precluded from bidding.

C. Incumbent Licensees Should Be Allowed to Form Bidding Consortia.

The Commission has requested comment on whether incumbent co-channel licensees should be allowed to form a consortium to bid for an MTA license on their frequency. Because many incumbent co-channel licensees have formed or are in the process of establishing intercarrier arrangements, it is vital that these carriers be allowed to form consortia for bidding purposes.

Allowing such consortia would not be anticompetitive, because together they will be bidding on only one of more than 100 paging frequencies. Therefore, there would be no lessening of competition in the paging industry. Instead, bidding consortia may be a way for smaller co-channel carriers to have a "fighting chance" in the auction.

D. The Commission Should Adopt Small Business Protections.

The Commission requests comment on whether it should adopt bidding credits, installment payment terms and other advantages for small businesses similar to those adopted for the PCS auctions. The Coalition agrees that such advantages should be adopted. However, these advantages are unlikely to make a difference in determining whether smaller entities can successfully bid on an entire MTA. Therefore, the Coalition does not view bidding credits and similar small business measures as tipping the balance in favor of market area licensing.

E. The Bid Withdrawal Rule Must Provide for Human Error.

During the ongoing C Block PCS auction, which was designed for small businesses and other "designated entities," there have been several mistaken bids entered. These mistaken bids seem to have involved human error as well as problems with the Commission's bidding software. The errors generally involved the inclusion of extra zeros on the bid amount, thereby unintentionally multiplying the bid ten-fold or one hundred-fold. The Commission is currently deciding how it will address this issue in the context of ongoing auctions. If the bid withdrawal rule is strictly applied, these companies will be responsible

for the difference between their withdrawn erroneous bid and the next-highest bid -- a penalty that could amount to millions of dollars.

The Commission appears to be proposing a substantially identical bid withdrawal rule for its proposed paging auctions. In light of the recent experiences in other auctions, the Commission must build into the bid withdrawal rule some allowance for human error. Otherwise, smaller paging companies will be dissuaded from participating in the auctions, because they will not be able to afford the risk of bankruptcy due to a simple mistaken keystroke when typing in the bid amount. Where the bid is clearly an error (such as a ten-fold increase over the required minimum bid increment), and the erroneous bid is promptly withdrawn, the bidder should be held only to the intended bid amount, or the minimum bid increment, whichever is greater.

IV. The Commission Should Ensure the Protection of Incumbent Licensees Following Auctions.

The Commission should provide adequate safeguards to prevent disruption of valuable existing services in the post-auction environment, if market area licensing is adopted. The most important protection is to retain the current service area and interference protection criteria for 900 MHz (and other bands, for that matter), as discussed above. Other steps must be taken to prevent the auction winner from interfering with the existing operations.

For instance, the proposed rules should require that the auction winner notify existing co-channel licensees in advance of activating transmitters that are within a given range of incumbent operations. If interference is caused, the incumbent may have suffered significant disruption of service by the time

the matter is resolved. Therefore, the Commission should also require that the market area licensee comply with reasonable requests by incumbent licensees for interference testing, prior to commencing operation.

Paging systems are dynamic in nature, requiring constant modification to respond to customer demand, building penetration problems, increased noise levels, loss of antenna sites, and other unforeseeable circumstances. It is vital that paging licensees be able to promptly and effectively add to or modify their systems in response to these exigencies. Otherwise, public subscribers suffer a degradation of service. Commissioner Chong has emphasized that the Commission should "not inadvertently hinder the ability of paging carriers to either compete or continue to expand their businesses."⁹

The Coalition therefore recommends that incumbent licensees be entitled to expand their systems after the auction under the same criteria which the Coalition has proposed for interim expansions: (1) the incumbent could file applications for additional sites on its licensed frequency, so long as each additional site is located within 40 miles of one of the incumbent's previously authorized transmitter sites; and (2) the incumbent could install additional transmitter sites on its licensed frequency, where the area to be served by the additional site is surrounded by the incumbent's authorized co-channel transmitters, forming a "pocket" around the proposed site.¹⁰ The former right

⁹ NPRM, Separate Statement of Commissioner Rachelle B. Chong, at 2.

¹⁰ During the interim comment cycle, the Coalition proposed that incumbents be allowed to fill in any area where the proposed transmitter will be surrounded by the incumbent's existing system along at least six of the eight principal radials. See Comments of the Paging Coalition, at pp. 14-15; Reply Comments at p. 4.

allows incumbents a reasonable area of growth, to satisfy immediate customer demand.¹¹ The latter applications would recognize that, where an incumbent has existing sites that largely encompass a given area, it better serves the public interest to allow the incumbent to serve the resulting "hole" in the coverage, rather than allowing the auction winner to establish one or two lower-powered sites.

V. The Commission Should Allow Partitioning By Rural Telephone Companies and Small Businesses.

The Commission should allow rural telephone companies and small businesses to partition portions of an MTA or other market area license, in order to expand their paging service, Improved Mobile Telephone Service (IMTS) and/or Basic Exchange Telecommunications Radio Service (BETRS) systems which are already operating. This partitioning right would be consistent with the mandate of Section 309 of the Communications Act to provide for participation in wireless services by "designated entities." Partitioning rights would further help to mitigate the harmful impact of market area licensing on small entities. However, because partitioning must be negotiated with the auction winner, it is not a complete solution.

¹¹ If the co-channel environment at the time of filing permits grant of the incumbent's application, the application would be granted. If multiple co-channel incumbents apply to expand to the same area, a site-specific auction could be held (unless the parties are able to reach a settlement).